

1 ELGUINDY, MEYER & KOEGEL, APC
2 RYAN N. MEYER, CA State Bar Number 258400
3 *rmeier@emklawyers.com*
4 2990 Lava Ridge Court, Suite 205
5 Roseville, CA 95661
6 Telephone: (916) 778-3310
7 Facsimile: (916) 330-4433

8
9 Attorneys for Plaintiff
10 OYC EQUITY, LLC, a Colorado limited liability
11 company

12 **UNITED STATES DISTRICT COURT**

13 **EASTERN DISTRICT OF MISSOURI – EASTERN DIVISION**

14
15 OYC EQUITY, LLC, a Colorado limited
16 liability company,

Case No.:

17 Plaintiff,

vs.

18 GARDNER CAPITAL, INC., a Missouri
19 corporation,

**PLAINTIFF OYC EQUITY, LLC'S
COMPLAINT FOR BREACH OF
CONTRACT**

20 Defendant.

21 OYC Equity, LLC, a Colorado limited liability company (“Plaintiff”), complains and alleges
22 as against GARDNER CAPITAL, INC., a Missouri corporation (“Defendant”) as follows:

23 **GENERAL ALLEGATIONS**

24 1. Plaintiff is, and at all relevant times indicated herein was, a Colorado limited liability
25 company, duly formed and existing under the laws of the State of Colorado, and having its principal
26 place of business in Denver, Colorado.

27 2. Defendant, Gardner Capital, Inc. is, and at all relevant times indicated herein was, a
28 Missouri corporation, duly formed and existing under the laws of the State of Missouri, and having
its principal place of business in Clayton, Missouri.

29 ////

30 ////

JURISDICTION AND VENUE

3. The Plaintiff and Defendant, by virtue of their principal places of business, are citizens of different States, and the amount in controversy exceeds seventy-five thousand dollars (\$75,000), thus this court has original jurisdiction over the instant matter under 28 U.S.C. § 1332.

4. Venue is proper under 28 U.S.C. § 1391 in that the Defendant resides in this judicial district.

FACTUAL ALLEGATIONS

8 5. On or around March 1, 2018, Plaintiff and Defendant entered into a Consultant
9 Master Services Agreement (the “MSA”), the scope of work for which Plaintiff would provide
10 services to Defendant was set forth on Schedule A thereto, generally consisting of originating solar
11 energy projects (“Scope of Services”). The parties agreed that Plaintiff would be compensated by
12 Defendant for such Scope of Services as set forth on Schedule B thereto.

13 6. In particular, the parties agreed that Plaintiff would receive, amongst other payments,
14 a bonus payment of fifteen thousand dollars (\$15,000) for each successful solar project that was
15 originated under the MSA, the timing of such payment being when a project reaches its completion
16 of development, is sold to a third party, or where Defendant relinquishes majority ownership in the
17 project (any of which is deemed a “Bonus Triggering Event”).

18 7. Thereafter, on or about June 4, 2018, Plaintiff and Defendant executed that certain
19 Amendment to Consulting Master Service Agreement, which altered the bonus payment portion of
20 Schedule B, and provided that Plaintiff would be paid a bonus payment equal to three thousand five
21 hundred dollars (\$3,500) per megawatt dc of any solar energy project originated under the MSA.

22 8. As is relevant to this matter, under the MSA, Plaintiff originated a twenty-five (25)
23 megawatt dc project called the Manchester Solar Project (the “Manchester Solar Project”) for
24 Defendant. Thus, upon a Bonus Triggering Event, Plaintiff was eligible for a bonus payment equal
25 to eighty-seven thousand five hundred dollars (\$87,500) (the “Bonus Payment”).

26 9. The Defendant sold the Manchester Solar Project to a third party (SunEast
27 Development, LLC) on or about October 2, 2019.

28 | //

10. The sale of the Manchester Solar Project to a third party is a Bonus Triggering Event, entitling Plaintiff to the Bonus Payment.

11. Plaintiff has made several demands to Defendant to remit the Bonus Payment, but to this date, Defendant has failed to do so, and as such there remains an outstanding sum due and payable to Plaintiff of eighty-seven thousand five hundred dollars (\$87,500).

FIRST COUNT

(Breach of Contract)

12. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 11 above, inclusive, as though fully set forth herein.

13. Plaintiff and Defendant entered into a written contract, which required (amongst other things), Defendant to pay Plaintiff the Bonus Payment.

14. Plaintiff has fully performed all of the covenants and conditions of the MSA, or was excused or prevented from performing the same as a result of Defendant's breaches of the same.

15. Plaintiff has made demand upon Defendant for payment of the Bonus Payment, but neither the whole nor any part thereon has been paid.

16. Defendant breached the MSA by failing to remit the Bonus Payment to Plaintiff, despite written demand.

17. As a direct and proximate result of Defendant's breach of the MSA, Plaintiff has been damaged in the amount of eighty-seven thousand five hundred dollars (\$87,500), plus interest at the maximum legal rate.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For damages in favor of Plaintiff in the amount of eighty-seven thousand five hundred dollars (\$87,500);
2. For pre-judgment interest at the maximum legal rate; and

111

111

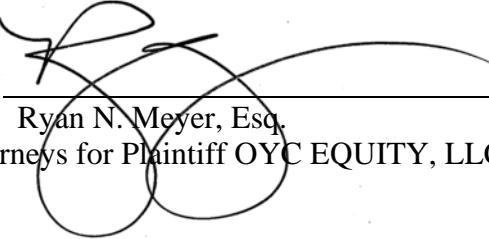
111

1 3. For such other and further relief as this Court deems just and proper.
2

3 Dated: October 28, 2020

Respectfully submitted,

4 ELGUINDY, MEYER & KOEGEL, APC

5 By: 

6 Ryan N. Meyer, Esq.
7 Attorneys for Plaintiff OYC EQUITY, LLC

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

